

Message Text

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DRAFTED BY L/SFP:LGFIELDS,JR:NMC

APPROVED BY L/SFP:LGFIELDS,JR.

DOD/GC - MR. JAS. ALLEN

MSC - MR. M.J. STICKLES

L/EUR - MR. H. RUSSELL (INFO)

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TO AMEMBASSY MADRID IMMEDIATE

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PASS TO AMBASSADOR MC CLOSKEY

E.O. 11652:N/A

TAGS: PFOR, MARR, SP

SUBJECT: G-3 TARIFF

1. THE FOLLOWING IS A BRIEFING MEMORANDUM FOR USE OF
AMBASSADOR MCCLOSKEY IN SPANISH BASE NEGOTIATIONS:

THE PROBLEM; SPANISH CONTINUE TO ARGUE THAT U.S. IS LIABLE
FOR PAYMENT OF G-3 TARIFF AND HAVE FAILED TO TAKE ACTION TO
ABATE LOCAL PORT AUTHORITIES HARASSMENT OF CARRIERS OF
USG CARGO FOR PAYMENT OF THE TARIFF.

QUESTION: IS USG ENTITLED TO EXEMPTION FROM PAYMENT OF
G-3 TARIFF UNDER 1953 TAX RELIEF ANNEX?

BACKGROUND: GOS RECOGNIZED USG EXEMPTION FROM PAYMENT OF
G-3 PREDECESSOR TAX (,ARIFA MUELLAJE).

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-GOS REPLACES TARIFA MUELLAJE BY G-3 TARIFF BY DECREE IN

1966. NATURE OF CHARGES AND METHOD OF COLLECTION WERE IDENTICAL UNDER BOTH LAWS--SOLE DISTINCTION WAS IN DISPOSITION OF REVENUE. UNDER G-3 TARIFF BULK OF REVENUES ARE RETAINED BY LOCAL PORT AUTHORITY TO COVER "EXPENSES OF EXPLOITATION AND CONSERVATION, THE DEPRECIATION AND A REASONABLE PROFIT FROM THE INVESTMENTS" AND THE BALANCE REMITTED TO SPANISH TREASURY (HACIENDA). UNDER PREDECESSOR

LAW ALL REVENUES WENT TO HACIENDA WHICH IN TURN PAID FOR PORT MAINTENANCE COSTS.

-IN 1970 (FOUR YEARS AFTER CREATION OF G-3 TARIFF, DURING WHICH PERIOD EXEMPTION FOR USG WAS RECOGNIZED) CADIZ PORT AUTHORITY BEGAN ASSESSING G-3 TARIFF AGAINST USG CONTRACT STEVEDORING FIRM AND U.S. FLAG CARRIERS.

-IN 1971 USG UNDER PROTEST INITIATED PAYMENT OF A PORTION OF CHARGES (NON-CONTAINERIZED CARGO) IN ESCROW ACCOUNT. BULK OF CHARGES BILLED, BUT NOT PAID.

-IN 1975 PORT OF ALGECIRAS TOOK LEGAL ACTION TO COLLECT G-3 TARIFF CHARGES BY FREEZING LOCAL ASSETS OF SEALAND'S SPANISH-BASED AGENT.

-ESTIMATED TOTAL CHARGES TO DATE AMOUNT TO \$750,000 (INCLUDING ESCROWED FUNDS). MILITARY SEALIFT COMMAND (MSC) ESTIMATES ANNUAL CHARGES FOR G-3 TARIFF TO BE \$100,000.

U.S. POSITION: USG IS UNDER TAX RELIEF ANNEX GRANTED BROADEST EXEMPTION FROM CHARGES RELATED TO COMMON DEFENSE ACTIVITIES. EXEMPTION COVERS "TAXES, SURCHARGES, CONTRIBUTIONS, OR OTHER CHARGES OF ANY NATURE," WHETHER LEVIED "BY OR FOR THE BENEFIT OF THE SPANISH GOVERNMENT, POLITICAL SUBDIVISIONS THEREOF, OR QUASI-GOVERNMENTAL ORGANIZATIONS." THE ONLY EXCEPTION TO USG EXEMPTION IS FOR "REASONABLE COMPENSATION...FOR SERVICES REQUESTED AND RECEIVED."

-G-3 TARIFF IS NOT A CHARGE FOR A SERVICE "REQUESTED AND RECEIVED," INASMUCH AS THERE IS NO SPECIFIC REQUEST FOR SERVICES AND NONE PROVIDED. ALL CONNECTED PORT SERVICES (STEVEDORING, LINE HANDLING, CRANES, STORAGE, ETC.) ARE SEPARATELY BILLED AND PAID. IT CLEARLY FALLS INTO THE CATEGORY OF AN INDIRECT GENERAL SERVICE CHARGE AS DEMONSTRATED BY THE FACT THAT THE G-3 TARIFF LAW MADE NO CHANGES IN THE PRACTICES AND PROCEDURES LIMITED OFFICIAL USE

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UNDER THE PREDECESSOR TAX.

-GOS POSITION THAT TAX RELIEF ANNEX WAS NOT VALID FOR LACK OF CORTES APPROVAL IS NOT CONSISTENT WITH RECOGNIZED INTERNATIONAL LAW AND PRACTICES AS CODIFIED IN ARTICLE 27, VIENNA CONVENTION ON LAW OF TREATIES AND THE FACT THAT GOS GRANTED DE FACTO RELIEF UNDER THE ANNEX IN THIS AND OTHER TAXES FOR A PERIOD IN EXCESS OF 20 YEARS.

2. FOR MORE DETAILED ARGUMENTATION ON G-3 TARIFF SEE
ATTACHMENT TO MAY 15, 1974 LETTER FROM ASSISTANT LEGAL
ADVISER FIELDS TO AMBASSADOR RIVERO ON THIS SUBJECT.

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